IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2485 of 2006
With
SPECIAL CIVIL APPLICATION No. 2488 of 2006
To
SPECIAL CIVIL APPLICATION No. 2491 of 2006
With
SPECIAL CIVIL APPLICATION No. 2493 of 2006
To
SPECIAL CIVIL APPLICATION No. 2496 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GIRISHBHAI VANECHAND DOSHI - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR AJ YAGNIK for Petitioner(s) : 1,
GOVERNMENT PLEADER for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 22/02/2006

ORAL JUDGMENT

1. Rule. Mr. Desai, learned AGP is directed to appear on behalf of the State Authorities. Since for the reasons as stated hereinafter, the issue is covered by the decision of this Court(Coram : M.S. Shah, J.) dated 04.11.2006 in Special Civil Application No. 11403 of 2004.

2. With the consent of the learned Advocate for both the sides, the matter is further heard today.

3. In all the petitions, the petitioners have prayed to declare the order of reversion dated 21.08.2004 passed by the respondent authority for reverting the petitioners from the post of Work Assistant to the post of Work Charge Clerk.

4. Upon hearing the learned counsel appearing for both the sides, it appears that the similar question arouse for consideration of this Court for examining the validity of the order of reversion in Special Civil Application No. 11403 of 2004 and allied matters and this Court (Coram : M.S. Shah, J.) as per the order dated 04.11.2004 inter alia observed at para 6 & 7 as under :

> "6. Having heard the learned counsel for the parties, the Court finds that the statutory recruitment rules framed in exercise of the powers under the proviso to Article 309 of the Constitution, as contained in the Notification dated 23.5.1985, specifically provide that the post of Workcharge Assistant in Class-III service shall be filled in either by promotion or transfer or by direct recruitment. For promotion to the posts of Work Assistant, persons who have rendered at least ten years' service as Karkoons or Mistris are eligible and from out of the eligible candidates, promotion is to be given to the persons of proved merit and efficiency. Although the recruitment rules do not refer to any departmental examination for eligibility

for promotion, the learned AGP has produced Government Circular dated 7.5.1987 laying down that the departmental examination in the aforesaid technical subjects para 4.4 is required to be passed to be eligible for promotion to the post of Work Assistant. In view of the aforesaid statutory rules and the Departmental Circular providing for technical departmental examination for promotion to the post of Work Assistant, it is clear that the Superintending Engineer could not have passed the impugned reversion orders without examining the facts of each individual case and ascertaining whether the concerned employees had rendered at least ten years' service as Karkoons or Mistris and whether they had undergone requisite technical training and passed the concerned technical departmental examination.

7. Since the respondents admittedly did not issue any show cause notice or give any opportunity of hearing to the petitioners before passing the impugned reversion orders, the impugned orders are liable to be quashed and set aside on this short ground alone."

5.It is also not in dispute that the opportunity of hearing is not given. However, in the said matter, this Court quashed the order of reversion, whereas, in the present case, as it appears that though the order is of 2004, the petitioners have approached to this Court by preferring a petition in the year 2006. Therefore, instead of quashing the order, I find that the status quo as prevailing on today regarding service conditions of the petitioners can be maintained till the opportunity of hearing is given to the petitioners and the matter is decided afresh in light of the observations made by this Court in the above referred Judgment. It may be recorded that this Court in the above referred decision observed that the concerned authority while considering the matter for reversion

will have to examine as to whether the person concerned worked as Work-Charge Clerk on site or worked as Clerk in the ministerial branch. The aforesaid exercise of issuing a fresh show-cause notice and passing a fresh order shall be completed as early as possible, preferably within a period of three months from the receipt of the order of this Court. Until the fresh order is passed, status quo as prevailing on today qua service condition of the petitioners shall be maintained. It is needless to state that in the event the order is against the petitioner, the petitioner shall be at liberty to resort to appropriate proceedings as may be permissible in law.

6. Petitions are partly allowed to the aforesaid extent. Rule made absolute. Considering the facts and circumstances, there shall be no orders as to cost.

Direct Service is permitted.

(JAYANT PATEL, J.)

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